

Unless otherwise provided by Congress, a defendant may remove “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a); Dennis v. Hart, 724 F.3d 1249, 1252 (9th Cir. 2013). The removing defendant bears the burden of establishing federal jurisdiction. Abrego Abrego v. Dow Chem. Co., 443 F.3d 676, 682 (9th

1 Cir. 2006); Gaus, 980 F.2d at 566-567. “Under the plain terms of § 1441(a), in order properly to
 2 remove [an] action pursuant to that provision, [the removing defendant] must demonstrate that original
 3 subject-matter jurisdiction lies in the federal courts.” Syngenta Crop Protection, 537 U.S. at 33. Failure
 4 to do so requires that the case be remanded because “[s]ubject matter jurisdiction may not be waived,
 5 and . . . the district court must remand if it lacks jurisdiction.” Kelton Arms Condo. Owners Ass’n v.
 6 Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003). “If at any time before final judgment it
 7 appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C.
 8 § 1447(c). It is “elementary that the subject matter jurisdiction of the district court is not a waivable
 9 matter and may be raised at anytime by one of the parties, by motion or in the responsive pleadings, or
 10 sua sponte by the trial or reviewing court.” Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n.2 (9th
 11 Cir. 1988).

12 From a review of the Notice of Removal and the state court records provided, it is evident that
 13 the Court lacks subject matter jurisdiction over the instant case, for the following reasons.

- 14 ☒ No basis for federal question jurisdiction has been identified.
- 15 ☒ The Complaint does not include any claim “arising under the Constitution, laws,
 16 or treaties of the United States.” 28 U.S.C. § 1331.
- 17 ☒ Removing defendant(s) asserts that the affirmative defenses at issue give rise to
 18 federal question jurisdiction, but “the existence of federal jurisdiction depends
 19 solely on the plaintiff’s claims for relief and not only anticipated defenses to
 20 those claims.” ARCO Envtl. Remediation, L.L.C. v. Dept. of Health & Envtl.
 21 Quality, 213 F.3d 1108, 1113 (9th Cir. 2000). An “affirmative defense based on
 22 federal law” does not “render[] an action brought in state court removable.”
 23 Berg v. Leason, 32 F.3d 422, 426 (9th Cir. 1994). A “case may not be removed
 24 to federal court on the basis of a federal defense . . . even if the defense is
 25 anticipated in the plaintiff’s complaint, and even if both parties admit that the
 26 defense is the only question truly at issue in the case.” Franchise Tax Bd. v.
 27 Constr. Laborers Vacation Tr., 463 U.S. 1, 14 (1983).
- 28 ☒ The underlying action is an unlawful detainer proceeding, arising under and
 governed by the laws of the State of California.
- ☒ Diversity jurisdiction is lacking.
- ☒ Every defendant is not alleged to be diverse from every plaintiff. 28 U.S.C. §
 1332(a).
- ☐ The Complaint does not allege damages in excess of \$75,000, and the removing
 defendant(s) has not shown, by a preponderance of the evidence, that the amount

1 in controversy requirement has been met. 28 U.S.C. § 1332(a); Abrego Abrego,
2 443 F.3d at 683.

- 3 ☒ The underlying unlawful detainer action is a limited civil action that does not
4 exceed \$10,000.

5 The removing defendant also alleges that civil rights removal jurisdiction exists under 28 U.S.C.
6 § 1443(1). [See Notice of Removal 7-8, 13-14, 16]. “[T]he ground for removal [under section 1443(1)]
7 is both specific and extremely narrow.” Davis v. Super. Ct. of State of Cal., 464 F.2d 1272, 1273 (9th
8 Cir. 1972). A removal petition under section 1443(1) must satisfy a two-part test. “First, the petitioners
9 must assert, as a defense to the prosecution, rights that are given to them by explicit statutory enactment
10 protecting equal racial civil rights. Second, petitioners must assert that the state courts will not enforce
11 that right, and that allegation must be supported by reference to a state statute or a constitutional
12 provision that purports to command the state courts to ignore the federal rights.” Patel v. Del Taco, Inc.,
13 446 F.3d 996, 999 (9th Cir. 2006) (quoting California v. Sandoval, 434 F.2d 635, 636 (9th Cir.1970)
14 (per curiam)); see Johnson v. Mississippi, 421 U.S. 213, 219 (1975).

15 The Notice of Removal fails to meet defendant’s burden to demonstrate that this action may be
16 removed pursuant to section 1443(1). Defendant alleges in conclusory fashion that California state
17 courts ignore state rules of civil procedure and state rules of evidence; that under the “California Civil
18 Code he is denied or cannot enforce her [sic] equal rights to contract for and secure her [sic] property
19 rights in the Superior Courts of the State of California on account of plaintiff’s discriminatory and
20 retaliatory acts in violation of fair housing”; and that California’s unlawful detainer statutes are “a
21 pervasive state statutory program which both on its face and as applied discriminates unfairly against
22 Ethnic-Surname Americans,” and “pro se litigants”; and that “fundamental constitutional rights are
23 routinely and systematically obliterated trampled or even obliterated” in state eviction proceedings.
24 [Notice of Removal 7-8, 11-13, 15-16].

25 Defendant’s conclusory allegations fail to satisfy the “specific and extremely narrow”
26 requirements of section 1443(a). See Patel, 446 F.3d at 999 (remanding where the removing defendants
27 “point[ed] to no formal expression of state law that prohibits them from enforcing their civil rights in
28 state court nor . . . to anything that suggests that the state court would not enforce their civil rights in
the state court proceedings”); see also Sandoval, 434 F.2d at 636 (“Bad experiences with the particular

1 court will not suffice.”); U.S. Bank Nat. Ass’n v. Azam, 582 Fed. Appx. 710, 710-711 (9th Cir. 2014)
2 (holding that the district court properly remanded the action because, “even assuming that the
3 prosecution of the unlawful detainer action violated [the plaintiff’s] right to racial equality,” she “failed
4 to establish that the state court could not enforce this right because a California statute or a
5 constitutional provision purported to command the state court to ignore her federal civil rights”);
6 Golden Union Prop., LLC v. Amesquita, 2011 WL 321095, at *4 (C.D. Cal. Jan. 26, 2011) (remanding
7 the case to state court because the defendant’s allegation that his “[c]onstitutionally guaranteed rights
8 to due process and a fair hearing” were “abrogated or rendered non-existent” by an unlawful detainer
9 action were “insufficient to invoke the court’s jurisdiction under § 1443”).

10 Accordingly, **IT IS ORDERED** that this matter may be, and hereby is, **REMANDED** to the
11 California Superior Court listed above for lack of subject matter jurisdiction.

12 February 10, 2016

13 Date: _____

S. James Otero

14 S. JAMES OTERO
15 UNITED STATES DISTRICT JUDGE
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